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February 2, 2024

**By ECF**

The Honorable Paul A. Engelmayer  
Thurgood Marshall U.S. Courthouse  
40 Foley Square, New York, NY 10007

Re: *Securities and Exchange Commission v. Solarwinds Corp. and Timothy G. Brown*,  
Case No. 23-cv-9518

Dear Judge Engelmayer:

We write pursuant to Your Honor's scheduling order, ECF No. 38, and Section 3.I of Your Honor's Individual Rules on behalf of Stewart Baker, Austin Berglas, John P. Carlin, Gus Coldebella, Gary P. Corn, H. Bryan Cunningham, J. Michael Daniel, Jeff Greene, Melinda Haag, Chris Inglis, Steven M. Kelly, Chris Krebs, James A. Lewis, Joseph Moreno, Jeannie S. Rhee, Paul Rosenzweig, Kurt Sanger, Suzanne Spaulding, John Reed Stark, Kemba Walden, and Mark Weatherford (collectively, "proposed *Amici*") to seek leave of this Court to file the attached *amici curiae* brief in aid of the Court's consideration of the defendants' motion to dismiss, ECF No. 44.

Proposed *Amici* are over twenty former federal law enforcement and national security officials with expertise in cybersecurity. Proposed *Amici* have served in senior leadership roles in the federal government in which they participated in the highest levels of policy deliberations on cybersecurity. Collectively, proposed *Amici* have devoted many years to protecting the national security interests of the United States spanning multiple administrations of both parties. Proposed

\*NOT ADMITTED TO THE DC BAR

*Amici* include the first National Cyber Director for the United States; the top Judge Advocate for the U.S. Cyber Command; the lead cyber official for the Department of Homeland Security; General Counsel of the National Security Agency and the highest-ranking civilian in the National Security Agency; the top national security lawyer for the Department of Justice; key Federal Bureau of Intelligence officials including the Chief of Staff and Senior Counsel to the Director, as well as Chief of Cyber Policy; a National Security Lawyer to the Central Intelligence Agency; and Chief of the Securities and Exchange Commission Office of Internet Enforcement. Proposed *Amici* have an interest in informing the Court regarding the federal government's efforts to encourage private companies to share cybersecurity information with government authorities, including law enforcement and national security agencies, on a voluntary basis.

In the attached brief, proposed *Amici* seek to aid the Court's consideration of the motion to dismiss by informing the Court about the need to be cognizant of any risk that enforcement actions like this one may disincentivize public-private information sharing, which is a critically important part of our national security. The current cyber risk environment has been characterized by a steady rise in the frequency and severity of cyberattacks perpetrated by increasingly sophisticated threat actors, some of which enjoy sponsorship by state actors hostile to American national security and foreign policy interests. In the experience of proposed *Amici*, a key component of the nation's cybersecurity strategy for combatting these threats is private entities' sharing of information regarding cyberattacks with federal law enforcement and national security agencies. When considering an enforcement action like this one, courts should keep in mind the risk that any action that might discourage such information sharing could be detrimental to national cybersecurity.

For these reasons, proposed *Amici* respectfully request the Court's permission to submit the attached brief as *amici curiae*. We have consulted with the parties, and counsel for the defendants consent to our filing. Counsel for the Securities and Exchange Commission does not oppose our request.

The proposed *Amici* appreciate the Court's consideration of this request.

February 2, 2024

Respectfully submitted,

/s/ John P. Carlin

John P. Carlin (*pro hac vice*  
motion pending)

/s/ Jeannie S. Rhee

Jeannie S. Rhee (*pro hac vice*  
motion pending)

**PAUL, WEISS, RIFKIND,  
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Copies to all counsel of record by ECF